Secret laws, secret government

Patrick Martin
8 July 2013

The secret court that hears applications for wiretapping and other forms of electronic surveillance, under the Foreign Intelligence Surveillance Act, has issued secret rulings that vastly expand the spy powers of the National Security Agency, according to a report Sunday in the *New York Times* .

The *Times* report gives a glimpse of the police-state infrastructure that underlies the threadbare trappings of democracy in the United States. The article begins:

"In more than a dozen classified rulings, the nation's surveillance court has created a secret body of law giving the National Security Agency the power to amass vast collections of data on Americans while pursuing not only terrorism suspects, but also people possibly involved in nuclear proliferation, espionage and cyberattacks, officials say."

The Foreign Intelligence Surveillance Court has been mainly known as a rubber stamp for requests from the executive branch for spying authorization. Of the 33,949 requests filed by the government since the FISA court was established in 1978, only 11 have been denied.

The *Times* reports that in its secret rulings, however, "the court has taken on a much more expansive role by regularly assessing broad constitutional questions and establishing important judicial precedents, with almost no public scrutiny…" The FISA court has "quietly become almost a parallel Supreme Court, serving as the ultimate arbiter on surveillance issues and delivering opinions that will most likely shape intelligence practices for years to come, the officials said."

This report confirms that under the Obama administration the tendencies towards police-state rule that emerged in the Bush administration—with its post-9/11 plans for a secret government that would rule the United States from Richard Cheney's notorious "undisclosed secure location"—are not only continuing, but accelerating.

The NSA

Times article comes a month after former contractor Edward Snowden leaked to the British newspaper the *Guardian* a classified order from the FISA court authorizing the collection of all telephone metadata from customers of Verizon Business Services. It was widely reported at the time that similar orders were in effect for all customers of all US-based telecommunications firms.

Additional revelations have followed from Snowden, and more are promised. It is likely that the report in the *Times* is the result of an authorized "leak" from US military-intelligence sources, aimed at preempting an even more devastating exposure of US government spying on the American people and the population of the world.

What is described in the *Times* article, however, is extraordinary. Under FISA, the targets of government spying—that is, the population of the United States and the entire world—confront a Star Chamber proceeding: a secret court, using secret interpretations of the law, hearing secret evidence from the government, and issuing secret rulings. If the target of such unconstitutional spying becomes aware of the surveillance, the government may issue a gag order forbidding the victim to reveal the ongoing spying to anyone else.

In the FISA court's proceedings, only one side, the government, is represented. The proposed targets of spying are neither informed of the requests nor permitted to oppose them. Such methods amount to shredding the Bill of Rights, particularly the Fourth Amendment, which requires a warrant for searches, and the Sixth Amendment, which provides defendants the right to a "speedy and public trial," to be represented by counsel and to be able to confront the witnesses against them.

For three decades, the FISA court was actually housed in a secure facility inside the headquarters of

© World Socialist Web Site

the US Department of Justice, making it physically, as well as practically, part of the executive branch. Six years ago, after the court's existence became more widely publicized, its office was moved to a federal courthouse in Washington DC. But it still remains effectively an arm of the intelligence apparatus, with 11 judges, all named by the Chief Justice of the Supreme Court, John Roberts, serving on-call on a rotating basis to ratify whatever spying the NSA or other agencies wish to carry out.

It is an irony of history that the 1978 law establishing the FISA court was drafted in response to the exposure of illegal CIA spying and assassination plots in the mid-1970s. The claim was that judicial oversight would prevent any future "excesses." The actual role of the FISA court has been the direct opposite: the court has simply enlisted the judiciary in the buildup of a police-state apparatus in America, just as "oversight" by congressional leaders has made the legislative branch a partner with the executive in trampling on democratic rights.

There is no institutional reform based on the principle of "checks and balances" that can reverse the decay of American democracy. This process is an inexorable byproduct of two interrelated processes: the deepening social polarization in America between a super-rich aristocracy of wealth and the vast majority of the population struggling to survive; and the growth of US militarism, with the American military-intelligence complex becoming the major repressive force around the world. It is impossible for the financial oligarchy either to defend their wealth and power at home or maintain their domination of the world while observing democratic and constitutional norms.

There is no significant opposition to police-state methods within any section of the capitalist ruling elite. The revelations in the *Times* —and a similar exposé in the *Washington Post* Sunday on US government tapping of undersea fiber optic cables—sparked no protests in either the Democratic or the Republican parties. None of the Sunday interview programs on the main television networks made any reference to these reports.

There is only one constituency for the defense of democratic rights, in the United States and throughout the world, and that is the international working class. American workers can and will be mobilized to defend the Bill of Rights and all the democratic principles that the American ruling class has betrayed and abandoned.

Democracy is increasingly incompatible with capitalism and the social inequality and militarism fostered by the profit system. The defense of democratic rights must become a central focus of the independent political mobilization of the working class in the struggle for socialism.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site